

**DETAILED ACTION**

***Response to Amendment***

The reply filed on 01/21/2009 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): No claims remain pending in the Application drawn to the originally presented invention.

Newly submitted amended claims 1, 2, 7-13, 15-19 and 21-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Newly submitted amended claims are drawn to the **Species of Fig. 2**, distinct embodiment species that requires asymmetry modulation based on a choice of code words.

Previously presented claims were drawn to **Species of Fig. 1**, distinct embodiment species that requires asymmetry modulation based on pit width modulation.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 2, 7-13, 15-19 and 21-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JORGE L. ORTIZ CRIADO whose telephone number is (571)272-7624. The examiner can normally be reached on Mon.-Fri 10:00 am- 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea L. Wellington can be reached on (571) 272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jorge L Ortiz-Criado/  
Primary Examiner, Art Unit 2627